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A stylized map of North Carolina is shown, filled with various symbols representing trees and vegetation. Some areas of the map are blacked out, likely representing urban or developed areas. The map is outlined with a decorative, wavy border. The title "Recreation Park & Open Space" is printed in a large, bold, serif font over the right side of the map.

Recreation Park & Open Space

Land Acquisition for Subdivisions in North Carolina

North Carolina Department of
Natural & Economic Resources

park

RECREATION, PARK, AND OPEN SPACE LAND ACQUISITION
FOR
SUBDIVISIONS IN NORTH CAROLINA

A Guide for Subdivision Standards
Through Dedication or Reservation

Revised
May 1977

Prepared by: Stephen H. Moler
Park/Recreation Consultant
And
J. Harold Moses, Chief
Park/Recreation Consulting Services Section
Division of Parks and Recreation

DEPARTMENT OF NATURAL AND ECONOMIC RESOURCES
STATE OF NORTH CAROLINA



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INTRODUCTION

The purpose of this publication is to provide information and guidance in the acquisition of recreation, park, and open space lands in conjunction with new residential subdivisions in North Carolina.

The provision of recreation, park, and open space land and water has been an accepted function of local government for more than a century. In 1977, the role of local government in the provision of leisure opportunities is more important than ever before. The municipal, county, and multi-governmental responsibilities increase with high unemployment, energy shortages, depressed economic conditions and general decline in purchasing power by millions of Americans. In addition, as local governments are expanding their leisure oriented functions, they are attempting to preserve recreation lands by regulating subdivisions. It is essential that recreation needs be coordinated with the preservation and use of flood plains and greenway systems.

The legal basis for local government activity in the provision of recreation and parks is defined, rather specifically, in the Recreation Enabling Law of North Carolina (Chapter 160A, Article 18 - Parks and Recreation). See reprint enclosed as an Appendix to this document.

LEGAL AUTHORITY

Statutes of the State of North Carolina provide:

Chapter 153A Counties Part 2. Subdivision Regulation

§ 153A-330. Subdivision regulation.--A county may by ordinance regulate the subdivision of land within its territorial jurisdiction. If a county, pursuant to G.S. 153A-342, has adopted a zoning ordinance that applies only to one or more designated portions of its territorial jurisdiction, it may adopt subdivision regulations that apply only within the areas so zoned and need not regulate the subdivision of land in the rest of its jurisdiction. (1959, c. 1007; 1965, c. 195; 1973, c. 822, s.1.)

§ 153A-331. Contents and requirements of ordinance.--A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of right-of-way or easements for street and utility purposes; and for the distribution of population and traffic in a manner that will avoid congestion and over-crowding and will create conditions essential to public health, safety, and the general welfare.

It should also be pointed out that in the 1975 General Assembly, Senate Bill 442 was enacted as Chapter 231 of the 1975 Session Laws. The legislative act is "an act to amend G.S. 153A-331 above TO ALLOW DEVELOPERS TO FURNISH FUNDS FOR COUNTIES TO PURCHASE RECREATION LAND. There is no municipal counterpart to Chapter 231, which provides as follows:

The General Assembly of North Carolina enacts:

Section 1. The first paragraph of G.S. 153A-331 is amended by adding a sentence to the end thereof to read as follows: ame

"A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land which may be used to serve more than one subdivision or development within the immediate area."

Further in Chapter 153A, Section 340. Grant of Power.
provides that "where appropriate, the conditions may include
requirements that recreational space be provided."

Statutes of the State of North Carolina further provide:

Chapter 160A
Municipalities (Cities or Towns)
Part 2. Subdivision Regulation

§ 160A-371. Subdivision regulation.--A city may by ordinance
regulate the subdivision of land within its territorial jurisdiction.

§ 160A-372. Contents and requirements of ordinance.--A
subdivision control ordinance may provide for the orderly growth
and development of the city; for the coordination of streets and
highways within proposed subdivisions with existing or planned
streets and highways and with other public facilities; for the
dedication or reservation of recreation areas serving residents
of the immediate neighborhood within the subdivision, and
rights-of-way or easements for street and utility purposes; for
the reservation of school sites for not more than two years
following final approval of the subdivision, pending acquisition
by public authorities; and for the distribution of population
and traffic in a manner that will avoid congestion and over-
crowding and will create conditions essential to public health,
safety, and the general welfare.

• § 160A-381. Grant of Power.--For the purpose of promoting
health, safety, morals, or the general welfare of the community,
any city is empowered to regulate and restrict the size
of yards, courts, and other open spaces, the density of population
..... Where appropriate, such conditions may include requirements
that street and utility rights of way be dedicated to the public
and that provision be made of recreational space and facilities.

Although the permissive legislation for counties (G.S. 153A-
331) and for cities (G.S. 160A-372) became effective February 1,
1974, and January 1, 1972, respectively, as of today few counties
or municipalities in North Carolina have chosen to require
dedication of recreation space in subdivisions.

It should also be noted that both the county (G.S. 153A-340)
and city (G.S. 160A-381) zoning enabling acts permit the require-
ment of recreational space as a condition on a special use permit

for such things as an apartment development, even where there is no subdivision of land.

A purpose of this document is to supply assistance to local units of government in providing for recreation by the creation of subdivision regulations (or the amendment of existing subdivision ordinances).

In order to bring about improved coordination in the acquisition of recreation, park, and open space lands, it is strongly recommended that comprehensive recreation and park plans be developed and approved. This should be done prior to the adoption of new or amended subdivision regulations containing recreation, park, and open space requirements.

SUBDIVISIONS

In a few municipalities in North Carolina, ordinances have recently been adopted (or amended) which require subdividers (or developers) to dedicate or reserve lands in new subdivisions for parks, recreation, or open space purposes. Such ordinances are justified on the premise that each subdivision increases the demand for recreation and park areas and that subdividers should be required to furnish public lands for the community in relationship to the need he creates when the population density of a land plot is substantially increased. Most municipalities, and some counties require subdividers to provide streets, sidewalks, and other public improvements for the same reasons. Theoretically, the developer recovers the monetary loss of contributing land or money by increasing the price of the constructed home or vacant lot. Thus, the homeowner who will benefit most by recreation and park lands being located in the subdivision will ultimately pay for it.

A few court decisions have been rendered on the constitutionality of state laws and local ordinances which permit or require dedication of land for parks and recreation in subdivisions. The general trend has been to uphold laws and ordinances requiring dedication or reservation of land, but to invalidate requirements for cash payment unless the law stipulates that the money be used to purchase recreation or park sites in or adjacent to the assessed subdivision.¹

¹National Association of Counties Research Foundation Community Action Guide, Outdoor Recreation! Legal Aspects, p.8.

The Institute of Government, University of North Carolina at Chapel Hill recently reported that in North Carolina "no appellate court decisions have been rendered which interpret the sections of the General Statutes relating to dedication or reservation of lands for parks and recreation purposes."

Therefore, it appears that local government may make requirements upon subdividers or developers regarding the dedication or reservation of lands for parks and recreation. These requirements may be as strong or as comprehensive as the governing unit desires if they are reasonable. The requirements may be included in all subdivisions and zoning ordinances.

DEFINITIONS

SUBDIVISION

"For the purposes of this ordinance the term 'subdivision' shall mean all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale, or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets, but the following shall not be included within this definition nor be subject to the suggested regulation established herein:

The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations;

the division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved;

the public acquisition by purchase of strips of land for the widening or opening of streets; and

the division of a tract into single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality or county as shown in these suggested standards."²

DEDICATION

"A 'dedication' is nothing more nor less than a gift, by the owner, of a right to use land for stated purposes. Legally this gift is made both to members of the public in general and to

²Hughson, Jerry R., North Carolina Model Subdivision Regulations, N.C. Dept. of Natural and Economic Resources, Raleigh, 1974, p. 9.

certain specific members of the public, notably purchasers of lots. Since a transfer of property rights is involved, the dedication is made by a written instrument which is recorded--sometimes a deed and sometimes a plat, coupled with a certificate of dedication. In order for the dedication to be 'complete' so that it cannot be modified or withdrawn, normally there must be an 'acceptance'. This may consist of some action by the public generally, such as using the property for the purpose for which it was dedicated, or it may be action by representatives of the public (a city council, a county governing board, or an appropriate state agency) either of a formal nature (such as adoption of a resolution) or of an informal nature (such as assumption of maintenance responsibilities)."³

"In several cities and counties subdividers have, on their own initiative, dedicated sites for parks, schools, and other public facilities. They have learned that land and home sales are made easier when potential purchasers can be assured that vital neighborhood service will have suitable location. In other cases local governments rely on persuasion to achieve dedication."⁴

RESERVATION

"A 'reservation' of land does not involve any transfer of property rights. It simply constitutes an obligation to keep the property free from development for a stated period of time. For example, the regulations might require the developer to reserve a

³Green, Jr., Philip, Regulating the Subdivision of Land, Institute of Government, University of North Carolina at Chapel Hill, 1968, p. 20.

⁴International City Manager's Association, Local Planning Administration, 1959, p. 366.

certain tract of land for a school site. This would mean that he could not subdivide this particular tract during the period stated in the regulations, thus giving the school board the right to acquire the property in one tract and before any houses had been built on it. Unlike a dedication, in which the owner receives no payment for his land, a reservation contemplates the governmental unit will pay the owner at the time it actually takes the property."⁵

"Under this procedure the city or county has the time to decide whether or not it desires to purchase or condemn the reserved land. The subdivider is protected, since if the governing unit decides not to acquire the site he may proceed to sell the land for building purposes. Despite unfavorable rulings by courts in Pennsylvania, compulsory reservation of public sites for a reasonable period of time would seem to be a valid exercise of the police power. All communities exercising plat review should, at the very least, insist on reservation requirements."⁶

⁵Green, Jr., Op. Cit., p. 20

⁶Association, Op. Cit., p. 366

ADVANTAGES OF DEDICATION OR RESERVATION OF RECREATION/PARK LANDS

Local ordinances requiring subdividers or developers to dedicate or reserve lands for recreation, park, or open space may provide distinct advantages for both the local governing agency and the subdivider. Of longer term importance, are the values accrued to the persons who will reside in the newly created subdivisions in terms of happier, more healthful, and a more environmentally pleasing location in which to reside.

DEDICATION

For the local governmental unit, some advantages of dedication include:

- (1) The unit of government can obtain land for recreation, park, or open space without capital outlays.
- (2) Adequate recreation and park areas are assured in locations convenient and safe for those who will ultimately reside in the subdivision.
- (3) In specified federal grant-in-aid programs, the value of the dedication may be used by the local unit of government toward development costs of the dedicated land.
- (4) The dedication would free other local governmental funds for acquiring and/or developing other tracts of land for community, city, or countywide use or for specialized areas/facilities.
- (5) The dedication can preserve fragile areas for compatible recreation use.

For the subdivider, some advantages of dedication include:

- (1) The average lot or residential unit value should increase

when the potential buyer is assured that the subdivision will have adequate recreation, park, and open space lands.

- (2) Land dedication can provide federal and state tax credits.
- (3) The subdivider knows, in advance, of the recreation and park requirements and can usually better plan the subdivision to take advantage of the requirements.

RESERVATION

For the local governmental unit, some advantages of reservation include:

- (1) Reservation provides the local governing authority sufficient time to determine if the fee acquisition is feasible.
- (2) It provides for local input from residents in the subdivision on use of the reserved land including type of facilities to be provided, and intensity of development of the reserved land.
- (3) Reservation may provide adequate recreation, park, or open space land at "raw" land value from the subdivider.

For the subdivider, some advantages of reservation include:

- (1) The subdivider knows that the municipality or county is interested in the property and if the property is acquired fair reimbursement will be received.
- (2) The governing unit must make a decision within a reasonable period of time. If the option is not exercised the subdivider can use or sell the land for other purposes.
- (3) The reserved land, if not acquired by the governmental unit, may be given or sold to the residents of the subdivision for the creation of a private recreation complex.

It may be apparent to the subdivider that there are distinctive disadvantages to both the dedication and reservation. Overall, however, the advantages seem to outweigh negative aspects while assuring a more inhabitable living environment.

AN EXAMPLE ORDINANCE

Philip Green, Jr., Institute of Government, University of North Carolina, Chapel Hill, writing in Regulating the Subdivision of Land, states: "To assure the strongest legal base, the regulations should contain definite standards as to when, where, and how much land will be required. Perhaps the most reasonable solution is to require provision of certain recreational facilities scaled to the number of families to be housed in the subdivision, coupled with a requirement that land shown on the comprehensive plan as park or school sites be dedicated or reserved; a maximum limit on the percentage of land within the subdivision to be dedicated could be included."

The example ordinance, with some local adaptations, meets most of the above suggested criteria. In addition, when land is dedicated or reserved, several factors should be considered to assure that the local governmental unit receives suitable lands to serve a variety of active and passive leisure pursuits. The primary factors affecting later efficient and effective utilization of lands for public recreation, park, and open space purposes are as follows:

- (1) Size of tract involved in dedication or reservation large enough to serve the needs of the people.
- (2) Unity of land parcels as it relates to other similarly used lands and relates to those persons enjoying the land.
- (3) Shape of dedicated or reserved tract to be developed or preserved in order that needs of citizens can be met.
- (4) Topography of acreage helping to prevent unreasonable problems

and expenses with grading or filling as it involves usability, expense of site preparation, and environmental factors.

- (5) Accessibility of land by public streets, bike trails, or walking trails to those using the tract. Accessibility also may apply to convenience of location within the subdivision to be readily accessible to all residents.
- (6) Vegetative cover on land parcel to afford attractiveness for users, protection from summer sun, and suitability for a variety of "natural setting" recreation experiences.

It should be stated that prior to preparing the example ordinance, a survey was made of selected municipalities and counties in North Carolina to determine how many had requirements for dedication or reservation of recreation, park, and open space land. The survey was conducted by the North Carolina Department of Natural and Economic Resources, Washington, North Carolina. The findings serve as a basis for the recommendations contained in this document.

EXAMPLE

FORMAT FOR SUBDIVISION REGULATIONS FOR RECREATION, PARKS, OR OPEN SPACE

The following provisions are intended as a guide for the draftsman who wishes to incorporate a requirement for dedication or reservation of recreation space in his subdivision regulations. They may be regarded as a "checklist" or collection of ideas to be incorporated into subdivision regulations, but should not be adopted intact.

(1) General Provisions

Every person or corporation who subdivides land for residential purposes shall be required to dedicate or reserve a portion of such land, as set forth in this ordinance for the purposes of park, recreation, and open space sites to serve the residents of the neighborhood in which the subdivision is located.

(2) Amount and Nature of Land Required for Dedication or Reservation

The amount of land required to be dedicated or reserved by a subdivider or developer shall be based upon the most recent U. S. Bureau of Census figures for an average size family for this particular (town), (city), (county) and a minimum park and recreation standard factor of eight (8) acres per 1,000 persons. The actual amount of land to be dedicated or reserved shall be determined by the following formula:

Total Number of Dwelling Units or Lots	X	**Average Size Of Family	X	.008 Acres Per Person	X	*Variable Multiple	=	Amount (Acreage) Dedication or Reservation
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Examples:

200 Units or Lots	X	3.3	X	.008	X	1.2	=	6.33 Acres
27 Units or Lots	X	4.1	X	.008	X	.7	=	.619 Acres
150 Units or Lots	X	2.3	X	.008	X	1.4	=	3.86 Acres

* Variable density factor

** Average Size of Family is computed on the basis of average size family in the municipality or county as indicated in the latest decennial census.

VARIABLE DENSITY FACTOR TABLE

Acreage Average Per Dwelling Unit or Lot	Variable Multiple
.0 - .1	1.8
.1 - .2	1.6
.2 - .3	1.4
.3 - .4	1.2
.4 - .5	1.0
.5 - .6	.9
.6 - .7	.8
.7 - .8	.7
.8 - .9	.6
.9 - Over	.5

Acreage Average per dwelling unit or lot is computed by dividing the combined total acreage of all dwelling units or lots by the number of dwelling units or lots. For computation purposes, land dedicated or reserved for other purposes such as streets, sidewalks, access alleys, utilities, drainage, or other purposes may not be used in determining average acreage.

The Variable Density Factor is designed to provide an adjustment to subdivision plats which contain average lot sizes of .5 acre and above. This adjustment is used since subdivisions with larger lots contain more open space and, thus, fewer residents, which create less demand for public recreation and park acreage. Conversely, those subdivision plats that create lots, which average less than .4 acre are adjusted due to the density of development and inherent increased demand for more public recreation and park land. The adjustments for large lots or for small lots are based on a sliding scale reflecting degree of density.

The requirements as outlined here apply to single family units, multiple family units (including apartments, condominiums and cooperative units), and mobile homes.

The minimum amount of land that shall be dedicated or reserved for recreation, parks, or open space in all subdivision plats shall be one-half ($\frac{1}{2}$) acre for each subdivision, five (5) percent of the gross acreage, or eight (8) acres per one thousand (1,000) persons whichever is greatest.

(3) Suitability of Land

Criteria for evaluating suitability of proposed recreation, park, and open space areas shall include but not be limited to the following as determined by the governing board after recommendations of the Planning Board. The Planning Board shall consult with the Recreation/Park Commission or Advisory Committee and/or Recreation/Park Administrator prior to making its recommendation pursuant to this subsection:

(A) Unity:

The dedicated or reserved land shall be a single parcel except where it is determined that two parcels or more would be in the public interest. The governing board may require that such parcels be connected.

(B) Size:

The amount of dedicated or reserved land shall be in accordance with the formula outlined above. If the formula, for any reason, is not applicable,

the minimum size requirement applies.

(C) Shape, Topography, and Subsoils:

The shape, topography, and subsoils of the dedicated or reserved parcel or parcels of land shall be such as to be usable for active recreation (play areas, ballfields, tennis courts, or similar recreation uses).

(D) Location:

The dedicated or reserved land shall be located so as to serve the recreation needs of the immediate neighborhood within the subdivision.

(E) Accessibility:

Public access to the dedicated land shall be provided either by an abutting street or public easement. Such easement shall be not less than 30 feet wide.

(F) Usability:

The dedicated or reserved land shall be usable for recreation: lakes may not be included in computing dedicated or reserved land area unless acceptable to the Planning Board. Where the Park and Recreation Commission or Committee and the Planning Board determines that recreation needs are being adequately met, either by other dedicated or reserved parcels or existing recreation facilities, then land that is not used for recreation may be dedicated or reserved as open space.

(G) Vegetative Cover:

The vegetative cover, if feasible, shall be sufficient to lend attractiveness to the land parcel, protection from the sun's rays, and suitability for a variety of nature related recreation opportunities.

(4) Reservations: Additional Requirements

Where reservation of land for parks, recreation, and open space is required, then additional documentation is needed.

- (A) At any time prior to the final approval of the subdivision plat, the owner shall give the governmental unit a valid option on the land provided for as a park, recreation or open space area within the subdivision. This option shall be a separate agreement to be drawn by the attorney of the governmental unit at no cost to the owner. It may contain terms which are mutually agreed to by the owner and the municipality or county but shall contain the following:

- (1) Legal description and plat map.
- (2) Provision for payment of \$ _____ to owner upon execution of the option, which shall be applied to the purchase price.
- (3) Provision that the owner shall sell the land at an agreed raw land value, which is the fair market value, of the proposed park, recreation or open space area before platting development or improvements.

(4) Provision that the option shall last for a period of 1 to 2 years unless terminated by exercise of the option to purchase by the governing unit or unless sooner terminated by governing unit by an instrument in writing.

(5) Provision that in addition to the stipulated purchase price if option is exercised, the owner shall be entitled to interest on the purchase price from date of execution of option until day of exercise of the option at _____ percent per year.

(5) Determination of Land Acquisition Cost

Reservation - Land Acquisition Cost:

Where land has been reserved for acquisition by the governmental unit the purchase price of the land will be the raw land value; which is the fair market value of the proposed park, recreation, or open space area before development or improvements.

In the event the governmental unit and the subdivider cannot agree upon the fair market value, or location, terrain, size and shape of the land necessary to be dedicated or reserved; or cannot agree upon the details of provisions for an equitable amount of land in another location; same shall be determined by existing established legal procedures.

(6) Adjustment Provisions

Notwithstanding provisions of this section to the contrary, the governing body may, in cases of an unusual or exceptional nature allow adjustments in the dedication

or reservation regulations established in and required by this ordinance. Such adjustments shall be reviewed by the Parks and Recreation Commission or Advisory Committee and/or the Planning Board before action by the governing body.

- (7) All ordinances or portion thereof in conflict with this amendment are hereby repealed.
- (8) Effective date of this amendment to the ordinance shall be the date when approved by the governmental unit.

ADOPTED THIS THE _____ DAY OF _____, 19____

Chairman (Governing Body)

ATTEST:

Clerk

APPENDIX

RECREATION ENABLING LAW OF NORTH CAROLINA

(North Carolina General Statutes, Ch. 160A, Art. 18)

ARTICLE 18 Parks and Recreation

§ 160A-350. Short title.--This Article shall be known and may be cited as the "Recreation Enabling Law."

§ 160A-351. Declaration of State Policy.--The lack of adequate recreational programs and facilities is a menace to the morals, happiness, and welfare of the people of this State. Making available recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by both State and local government. The General Assembly therefore declares that the public good and the general welfare of the citizens of this State require adequate recreation programs, that the creation, establishment, and operation of parks and recreation programs is a proper governmental function, and that it is the policy of North Carolina to forever encourage, foster, and provide these facilities and programs for all its citizens.

§ 160A-352. Recreation defined.--"Recreation" means activities that are diversionary in character and aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental and cultural development and leisure time experiences.

§ 160A-353. Powers--In addition to any other powers it may possess to provide for the general welfare of its citizens, each county and city in this State shall have authority to:

- (1) establish and conduct a system of supervised recreation;
- (2) set apart lands and buildings for parks, playgrounds, recreational centers, and other recreational programs and facilities;
- (3) acquire real property, including water and air rights, for parks and recreation programs and facilities by gift, grant, purchase, lease, exercise of the power of eminent domain, or any other lawful method;

- (4) provide, acquire, construct, equip, operate, and maintain parks, playgrounds, recreation centers, and recreation facilities, including all buildings, structures, and equipment necessary or useful in connection therewith;
- (5) appropriate funds to carry out the provision of this Article;
- (6) accept any gift, grant, lease, loan, bequest, or devise of real or personal property for parks and recreation programs. Devises, bequest, and gifts may be accepted and held subject to such terms and conditions as may be imposed by the grantor or trustor, except that no county or city may accept or administer any terms that require it to discriminate among its citizens on the basis of race, sex, or religion.

§ 160A-354. Administration of parks and recreation programs.--A city or county may operate a parks and recreation system as a line department, or it may create a parks and recreation commission and vest in it authority to operate the parks and recreation system.

§ 160A-355. Joint parks and recreation systems.--Any two or more units of local government may cooperate in establishing parks and recreation systems as authorized in Article 20, Part 1, of this Chapter.

§ 160A-356. Financing parks and recreation.--Each county and city is authorized to expend for its parks and recreation system any of its revenues not otherwise limited as to use by law.

Revised by the 1975 General Assembly

Division of Parks and Recreation
Dept. of Natural and Economic Resources
P. O. Box 27687
Raleigh, N. C. 27611

